

REMARKS

Applicants thank the Examiner for the courtesy extended to Applicants' representative Brian Hollis during an Examiner Interview on May 20, 2008. During the interview, Applicants' representative and the Examiner discussed the merits of the Advisory Action of May 12, 2008. Specifically, the Advisory Action noted that "the claims filed with the above submission require additional search and consideration because the claims are now include a depth selection assembly ..." Applicants noted however that the amended claims do not require additional search and consideration because they merely incorporated features of respective dependent claims. Also during the interview, Applicants and the Examiner discussed the pending claims of record in view of the prior art. While no specific agreement on allowability was reached, Applicants agreed, upon the Examiner's recommendation, to submit a second amendment after final. This second amendment after final reflects the same claim amendments as the first amendment after final filed on April 24, 2008, except that claims 1-11, 19 and 21-38 have been cancelled. At the request of the Applicants' representative, the Examiner agreed to discuss the merits upon receipt of this second amendment after final. As such, Applicants look forward to discussing the subject application at that time.

Claims 12-18 and 20 are now pending in the application. Of these pending claims, claim 12 has been amended; claims 1-11, 19 and 21-38 have been canceled. The basis for the foregoing amendments may be found throughout the written description, drawings and claims as originally filed. The Examiner is respectfully

requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. §112

Claim 12 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Applicant has amended claim 12 to replace "said positioning member" with "said positioning rod". Applicant therefore requests reconsideration and withdrawal of this rejection.

REJECTION UNDER 35 U.S.C. §102

Claims 1-20 and 31-38 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 7,255,702 (Serra). This rejection is respectfully traversed.

At the outset, Applicant notes that claims 1-11, 19, and 31-38 have been canceled rendering this rejection moot as it pertains to these claims.

The most recent Office Action is silent on the limitation of a depth guide assembly. Applicant has reproduced Figs. 8 and 11 of Serra immediately below for reference.

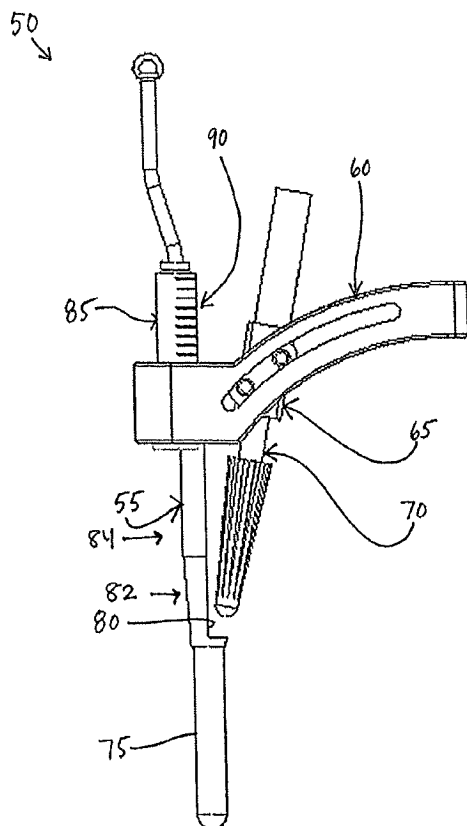


FIG. 8

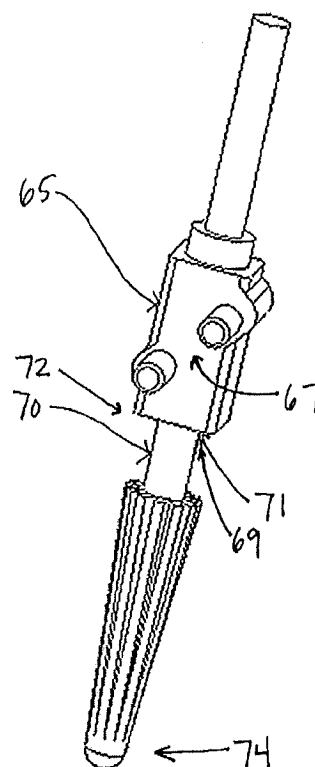


FIG. 11

Serra provides a milling instrument system 50 including a reference frame 55, a guidance support member 30, a reamer shuttle 65, and a cutting device 70. The cutting device 70 is selectively attached to a rotational coupler 71 within the reamer shuttle 65 so that the cutting device 70 is allowed to revolve freely within the reamer shuttle 65 while constrained within a path set by the guidance support member 60. The cutting device 70 and the reamer shuttle 65 are constructed, such that the cutting device 70 is constrained within the reamer shuttle 65 so that only relative motion between each component is the cutting device 70 rotating freely inside the reamer shuttle 65. See column 5, lines 12-16. During use, the cutting device 70 is constrained within a path set by the guidance support member 60. As the cutting device 70 rotates and follows the path provided by the guidance support member 60, the cavity is created in the bone.

Applicant therefore submits that the depth of travel for the cutting device 70 is only controlled by the arcuate path formed in the guidance support member 60.

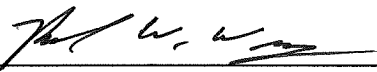
Turning now to claim 12, Applicant has amended claim 12 to include the features of dependent claim 19 that is directly dependent upon claim 12. Specifically, claim 12 has been amended to include "a depth guide assembly including at least one of: a sleeve adapted to be disposed between said first guiding member and the selected bone portion; and a stop extending from said selecting tool and selectively secured to various positions along said resecting tool operable to engage said guide member upon sufficient translation of said resecting tool and thereby limit movement of said resecting tool relative to said positioning rod". Claim 12 has been amended simply to include features of already examined claim 19. Therefore, Applicant submits that this amendment to claim 12 should not necessitate a new search and be entered by the Examiner. Applicant notes that the most recent Office Action is silent on the limitations of a depth guide assembly. More specifically, the most recent Office Action is silent on a depth guide assembly including at least one of a sleeve... and a stop. Therefore, clear error exists in this 35 U.S.C. §102 rejection. Therefore, Applicant respectfully requests reconsideration and withdrawal of this rejection as it pertains to claim 12 and dependent claims therefrom.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: May 27, 2008

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